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No. 76-1418

# In the Supreme Court of the United States

OCTOBER TERM, 1976

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, ET AL., PETITIONERS

*v.*

RUDOLPH A. RICHARDS, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA*

## MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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**MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE**

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## QUESTION PRESENTED

Whether an ordinance excluding certain non-residents from parking on the streets of residential neighborhoods violates the Equal Protection Clause of the Fourteenth Amendment.

## INTEREST OF THE UNITED STATES

Congress concluded in Section 1 of the Clean Air Act that "the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare." 42 U.S.C. 1857(a)(2). Congress decided that air pollution should be abated and authorized the Environmental Protection Agency to coordinate the national effort, but it

recognized "that the prevention and control of air pollution at its source is the primary responsibility of States and local governments." 42 U.S.C. 1857(a)(3); see generally *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 63.

The primary tool for the control of air pollution is the implementation plan each State must prepare and enforce. See 42 U.S.C. 1857c-5(a)(1). States and their subdivisions select the mix of measures to control pollution that they deem most desirable in light of the costs and benefits of each method. The Environmental Protection Agency has suggested to the States that strategies to reduce the number of vehicle miles traveled may be especially useful ways to reduce pollution, and that limitations on parking may be especially useful ways to reduce the number of vehicle miles traveled (38 Fed. Reg. 30629).[1]

The ordinance at issue in this case arose out of the quest to reduce air pollution emitted from automobiles. The State of Virginia promulgated a plan that recognized the importance of reducing vehicle miles traveled; it left to local jurisdictions the task of selecting devices (38 Fed. Reg. 33702, 33706-33707), and Arlington County adopted an ordinance restricting non-resident parking as a tool to reduce vehicle miles traveled. The ordinance was enacted on May 18, 1974, and submitted to the Environmental Protection Agency for approval;[2] the Agency approved the

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[1]See also 38 Fed. Reg. 16551, 16552, and the Environmental Protection Agency's August 1973 "White Paper" on the problems of control of pollution by vehicles.

[2]The ordinance appears at Pet. App. 24a-28a. Under the ordinance the right of non-resident commuters to park their cars in residential neighborhoods during business hours may be curtailed when the County Manager determines that more than 75 percent of the onstreet parking capacity is in use and that more than 25 percent of the capacity is used by non-residents whose destination is an industrial or commercial area adjoining the residential neighborhood. See also Pet. 3-5.



ordinance on November 18, 1974, as "a reasoned approach to address, among other community needs, degrading air quality due to excessive commuter parking" (Pet. App. 29a).[3]

The decision of the Supreme Court of Virginia invalidating this aspect of the pollution control strategy on federal constitutional grounds would affect the ability of States and localities to meet the goals established by Congress in the Clean Air Amendments of 1970. If the decision below is correct, they must devise other strategies that would effectively control pollution, or the United States must devise broader strategies. The United States therefore has a significant interest in the question presented by this case.

## DISCUSSION

1. The Supreme Court of Virginia has held that a local ordinance limiting the circumstances under which non-residents may park on the streets of residential neighborhoods violates on its face the Equal Protection Clause of the Fourteenth Amendment.[4] If the decision below is allowed to stand, the State and its subdivisions will be required to find new pollution control strategies, and the new strategies may be more costly or more disruptive than was the restriction on non-resident parking.

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[3]Because the ordinance was voluntarily enacted, this case is not affected by *Maryland* v. *Environmental Protection Agency*, 530 F. 2d 215 (C.A. 4), and *District of Columbia* v. *Train*, 521 F. 2d 971 (C.A. D.C.), vacated *sub nom. Environmental Protection Agency* v. *Brown*, No. 75-909, May 2, 1977, which dealt with the extent to which the Agency could require unwilling States to enforce a pollution control plan that had been promulgated by the Agency.

[4]The court declined to consider record evidence offered in support of the statute. See Pet. App. 4a-5a.

Numerous plans prepared to implement the Clean Air Amendments of 1970 include restrictions on parking, and these restrictions have been upheld by at least two courts of appeals. *South Terminal Corp.* v. *Environmental Protection Agency*, 504 F. 2d 646, 671-676 (C.A. 1); *Friends of the Earth* v. *Environmental Protection Agency*, 499 F. 2d 1118, 1125 (C.A. 2). The Supreme Judicial Court of Massachusetts also has upheld a ban on nonresident parking. *Commonwealth* v. *Petralia*, No. M-729, decided April 29, 1977.[5] On the other hand, several state courts have held restrictions on non-resident parking to be unconstitutional,[6] and the constitutionality of such restrictions is being challenged elsewhere.[7] A conflict between the highest courts of two States already exists, and the problem is such that further litigation in the lower courts is unlikely either to assist this Court in deciding the issue or to obviate the need for that decision.

2. The United States believes that restrictions on the availability of parking can be an important part of a program to reduce pollution. A restriction upon parking by non-residents, such as that at issue here, reduces pollution because it deters non-residents from using cars to commute into the area.

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[5]For the convenience of the Court, we have reprinted *Petralia* as an Appendix to this memorandum.

[6]See *State* v. *Whisman*, 24 Ohio Misc. 59, 263 N.E. 2d 411 (citing earlier decisions).

[7]See, *e.g.*, *Georgetown Association of Businessmen* v. *District of Columbia*, D.C. Super. Ct., Civ. No. 7242-76, decided August 9, 1976 (preliminarily enjoining a restriction on non-resident parking); *State* v. *Thompson*, Md. Cir. Ct., Crim. No. 19018, decided March 16, 1977. See also Pet. 18-19.



Any program to reduce pollution, including restrictions on non-resident parking, imposes hardships on those who must alter their behavior, but the existence of such hardships is inevitable. *Union Electric Co.* v. *Environmental Protection Agency*, 427 U.S. 246 (pollution control, which benefits the general public, may be achieved by requiring particular factories to clean up or close down). Cf. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (particular mine operators may be required to recompense miners for damage caused by coal dust inhalation).

The Supreme Court of Virginia offered several reasons for its conclusion that the restriction upon non-resident parking violates the Equal Protection Clause of the Fourteenth Amendment. It stated that the ordinance discriminates in favor of neighborhood residents (Pet. App. 7a), that it is irrational to favor residents over non-residents in designing public programs (*id.* at 9a-10a), that it is improper to give residents "a parking monopoly in the public streets of their neighborhood" (*id.* at 9a), and that although a statute favoring residents over non-residents may reduce the amount of pollution, "solutions achieved at the price of invidious discrimination are too dear" (*id.* at 12a). Each of these grounds is inconsistent with decisions of this Court.

*a.* The Supreme Court of Virginia's apparent conclusion that statutes distinguishing between residents and non-residents of a particular location are irrational conflicts with *McCarthy* v. *Philadelphia Civil Service Commission*, 424 U.S. 645, and *Detroit Police Officers Association* v. *City of Detroit*, 405 U.S. 950, dismissing for want of a substantial federal question an appeal from 385 Mich. 519, 190 N.W. 2d 97. *McCarthy* and *Detroit* each involved a local statute requiring certain municipal employees

to be *bona fide* residents of the city; in each case non-residents attacked the statute as irrational and discriminatory; in each case this Court upheld the statute. In *McCarthy* the Court concluded (424 U.S. at 646) that "[w]e have • • • held that this kind of ordinance is not irrational." The Court also rejected the argument that a requirement of *bona fide* residence impinged upon the right of interstate travel. *Detroit* and *McCarthy* establish that statutes preferring residents over non-residents are not irrational.

*b.* To the extent that the Supreme Court of Virginia relied upon the argument that the grant to neighborhood residents of a "monopoly" over that neighborhood's parking space offends the Equal Protection Clause, its rationale is inconsistent with *City of New Orleans* v. *Dukes*, 427 U.S. 297. *Dukes* sustained, against an equal protection challenge, a New Orleans ordinance that created a monopoly of hot dog vending in the French Quarter of the City. The Court rejected the argument that the City's desire to preserve the appearance and attractiveness of the Quarter was an insufficient reason to exclude other hot dog vendors, and it explained, in language equally appropriate to the present case (427 U.S. at 303-304):

> When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. • • • Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economics under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. • • • [T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines • • •; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.



See also *Dandridge* v. *Williams*, 397 U.S. 471, 485-486; *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488.

The Supreme Court of Virginia did not find, nor could it have found, that the restriction upon non-resident parking is a "wholly arbitrary act" or that it affects fundamental personal rights.[5] The ordinance is rationally related to the goals, recited in its preamble (Pet. App. 25a), to "protect [the neighborhoods] from polluted air, excessive noise, and trash and refuse caused by the entry of [non-residents'] vehicles; to protect the residents of those districts from unreasonable burdens in gaining access to their residences; to preserve the character of those districts as residential districts; • • • and to preserve the safety of children and other pedestrians • • •." These goals, which are undoubtedly advanced by the parking restrictions, are at least as pressing as the goals deemed sufficient in *Dukes* to justify the creation of a hot dog monopoly.

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[5]States traditionally have had broad powers to make rules concerning the use of the public streets and the right to drive upon them. *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520, 523; *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 783. Use of a car is not a fundamental right. See *Dixon* v. *Love*, No. 75-1313, decided May 16, 1977, slip op. 7-8.

*c*. The state court appeared to concede that the ordinance has legitimate goals (Pet. App. 7a) and is rationally related to these goals, but it concluded that the burdens imposed upon non-residents in the course of achieving those goals made the price "too dear" (*id.* at 12a). Such judicial re-evaluation of the legislative judgment is inconsistent with *Village of Belle Terre* v. *Boraas*, 416 U.S. 1. *Boraas* upheld a zoning ordinance that excluded from the Village certain groups of unrelated persons that were thought to contribute to overcrowded conditions. The non-residents who sought admission to the Village contended that the ordinance was unfair and did not achieve goals sufficiently important to justify the imposition on association that the ordinance created, but this Court concluded that such value judgments are a proper matter of legislative discretion. It explained (416 U.S. at 9) that "[a] quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. • • • The police power • • • is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

The Arlington ordinance involved in the present case serves values no less important than those at stake in *Boraas*. The burden of the Arlington ordinance is much less; the Arlington ordinance excludes cars, not people, and persons desiring to commute to work can do so by using public transportation or finding other places to park. Whether the ordinance exacts a price "too dear" in relation to its objectives is a legislative, not a judicial, judgment, and it is immaterial that the benefits of the ordinance may not have been established to the court's satisfaction. *Whalen* v. *Roe*, No. 75-839, decided February 22, 1977, slip op. 6-9. The restriction on non-resident parking is rationally related to a permissible goal of legislation, and it does not impinge



on fundamental personal rights or draw suspect distinctions. Indeed, it is not a classification of people at all. It distinguishes only between consequences attached to different categories of activities. Persons who live in a few designated neighborhoods may park there; most persons who do not, may not. This is ordinary police legislation attaching particular consequences to decisions persons may make about where to reside, and it does not violate the Equal Protection Clause.

## CONCLUSION

The petition for a writ of certiorari should be granted.[9]

Respectfully submitted.

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MAY 1977.

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[9]Because the decision of the Supreme Court of Virginia so clearly conflicts with the governing equal protection principles, this Court may wish to consider summary reversal.

DOJ-1977-05

## APPENDIX

April 29, 1977
No. M-729

S.J.C.

COMMONWEALTH *vs.* GUY A. PETRALIA

(and three companion cases[1]).

**WILKINS, J.** The defendant, who has been charged with a parking violation in Cambridge, challenges the constitutionality of the regulation of the city's traffic director under which he was charged.[2] He challenges the regulation because it permits only authorized residents of Cambridge to park their automobiles on the public street where he, a nonresident, parked his automobile. We conclude that the classification made by the regulation bears a rational relation to proper legislative objectives.

The case is before us on a report which contains all the material facts. We transferred the case to this court on our own motion. Before considering the specific questions reported to us, we shall set forth the necessary background.

On May 6, 1975, a complaint issued charging the defendant with parking on Spring Street in East Cambridge, in a residential zone near the court house complex, in violation of a regulation of the traffic director. Spring Street was posted with signs reading "PARKING BY PERMIT ONLY EX SUN." The defendant had no permit

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[1]Two of the companion cases are by the Commonwealth against Mr. Allan A. Fishman and one is by the Commonwealth against Mr. Joseph H. Porter. Mr. Petralia is the only defendant who has filed a brief with this court. We shall refer to him as the defendant. All three are members of the bar of the Commonwealth.

[2]Statute 1961, c. 455, as amended through St. 1972, c. 340, authorizes the adoption of traffic regulations in Cambridge.

and, as a non-resident of Cambridge, was not entitled to obtain one under the traffic director's "Rules and Regulations for the Resident Parking Sticker Program." A permit could be obtained by any resident of Cambridge for an automobile registered in Massachusetts, principally garaged in Cambridge, and owned or used by that resident.

On May 14, 1975, the defendant pleaded not guilty in the Third District Court of Eastern Middlesex. He was found guilty, fined $10, and appealed to the Superior Court. The defendant filed a motion to dismiss in the Superior Court, alleging various grounds for the motion.[3] Mr. Porter joined in the defendant's motion; Mr. Fishman filed a motion to dismiss which did not allege any grounds. The judge sitting in the Superior Court concluded that the motions raised "questions of law which are both doubtful and important" which required a decision of this court and reported the cases in pursuance of G. L. c. 278, § 30A.[4]

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[3]The motion to dismiss alleged that the parking regulation was unconstitutional as (a) a denial of equal protection of the laws, (b) an interrference "with the fundamental right of all people to travel uninhibited," (c) a denial to nonresidents of free and equal use of the public streets, (d) a denial to nonresidents of unrestricted access to the courts of Middlesex County in Cambridge, (e) a denial of the privileges and immunities of citizenship enjoyed by the residents of Cambridge, (f) being void for vagueness, (g) an interference with commerce, and (h) constituting an indirect tax on nonresidents for use of public streets.

[4]General Laws c. 278, § 30A, inserted by St. 1954, c. 528, provides for an interlocutory report in a criminal case of a question or questions of law which the judge regards "so important or doubtful as to require the decision of . . . [this court] thereon before trial, in the interest of justice." The entire case is not to be reported but only so much of it as is "necessary to present the question of law." Although G. L. c. 278, § 30A, provides for reporting of such a question to this court, the report properly was entered initially in the Appeals Court. See G. L. c. 211A, § 10.



As to Mr. Porter and Mr. Fishman, we do not consider the questions reported because neither has filed a brief in this court nor joined in Mr. Petralia's brief. See Mass. R. A. P. 16 (j), 365 Mass. 860 (1974). Therefore, each has waived his right to rely on the contentions which prompted the judge's reported questions. *Carangias* v. *Market Men's Relief Ass'n*, 293 Mass. 284, 285 (1936). These defendants have no right to answers from this court, and it makes no difference that the judge reported the case without decision. *Soscia* v. *Soscia*, 310 Mass. 418, 422-423 (1941). See *Commonwealth* v. *Eppich*, 304 Mass. 678 (1939).

As to the defendant, we consider the questions reported, which are set forth in the margin,[5] only in so far as they have been argued in his brief. The remaining questions need not be considered because, by not arguing them, the defendant has waived them as a basis for his motion to dismiss. Mass. R. A. P. 16(a)(4), as amended, Mass. (1975). The only argument now made by the defendant is that the parking

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[5]The judge stated that "[t]he questions requiring decision are as follows:

"a. Is Chapter 455, Acts of 1961, as amended by Chapter 340, Acts of 1972, constitutional?

"b. Is Chapter 455, Acts of 1961, as amended by Chapter 340, Acts of 1972, constitutional, as applied to these defendants?

"c. Is Chapter 455, Acts of 1961, as amended by Chapter 340, Acts of 1972, either on its face or as applied to these defendants, invalid for any reason stated in the Defendants' Motions to Dismiss?

"d. Are Cambridge Traffic Regulations implementing a resident-only parking system, adopted pursuant to Chapter 455, as amended by Chapter 340, Acts of 1972, constitutional as applied to the defendants?

"e. Should the Defendants' Motions to Dismiss be granted or should an order issue that the defendants be brought to trial forthwith, or should some other appropriate disposition be made?"

regulation discriminates against him as a non-resident in violation of his right to equal protection of the laws.[6]

The basic question is whether the classification made by the regulation rationally furthers a legitimate State purpose. *Opinion of the Justice*, Mass., (1975).[a] *Commonwealth* v. *Henry's Drywall Co.* 366 Mass. 539, 541-543, 544-546.[b] *Pinnick* v. *Cleary*, 360 Mass. 1, 27-28 (1971). *New Orleans* v. *Dukes*, 427 U.S. 297, 303-304 (1976). *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 8-9 (1974). Our analysis is no different because the challenged governmental action is based on a regulation, enacted pursuant to statutory authority, rather than based directly on a statute. See *Colella* v. *State Racing Comm'n*, 360 Mass. 152, 155-156 (1971); *Commonwealth* v. *Berney*, 353 Mass. 571, 574 (1968) (ordinance banning

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[6]The defendant does not challenge the regulation as exceeding the traffic director's statutory authority. Statute 1972, c. 340, amended cl. (*a*) of § 3 of St. 1961, c. 455, to authorize an exception from parking prohibitions in specified residential areas for certain vehicles of certain residents of Cambridge.

We are not presented with the question whether the regulation went beyond the statutory authorization by making stickers available to each resident of Cambridge owning or using an automoble principally garaged in Cambridge. The 1972 statutory amendment (St. 1972, c. 340) appears literally to authorize stickers only for persons residing in a specified residential area where parking is authorized by permit only. We have been advised that in 1974 a judge of the Third District of Eastern Middlesex ruled that a regulation which did not authorize all city residents to obtain a sticker discriminated impermissibly among Cambridge residents in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. That judge indicated that a parking permit program available to all Cambridge residents would be valid. The traffic director apparently thereafter altered the parking sticker program to make stickers available to all residents of Cambridge who owned vehicles principally garaged in Cambridge.

[a]Mass. Adv. Sh. (1975) 2637, 2642.

[b]Mass. Adv. Sh. (1974) 2377, 2380-2382, 2385-2386.



overnight parking); *Commonwealth* v. *Dobbins*, 344 Mass. 272, 275 (1962) (parking ordinance); *Commonwealth* v. *Sargent*, 330 Mass. 690, 692 (1953) (Boston parking regulation exempting only members and officers of the General Court upheld against an equai protection of the laws challenge). The defendant rightly concedes that the regulation of the use and operation of vehicles on public ways, including parking, is a legitimate subject of State concern. *Commonwealth* v. *Dobbins*, *supra* at 275, and cases cited. *Opinion of the Justices*, 297 Mass. 559, 563-564, 566 (1937). The Commonwealth's right to regulate vehicles stopping on a public way existed even before the invention of the motor vehicle. See *Commonwealth* v. *Rowe*, 141 Mass. 79, 80 (1886) (a cab); *Commonwealth* v. *Fenton*, 139 Mass. 195, 197 (1885) (a wagon). In addition, the reduction of traffic congestion and air pollution and the encouragement of the use of public transportation are legitimate State purposes. See *Radcliffe College* v. *Cambridge*, 350 Mass. 613, 617 & n. 4 (1966); *Cabot* v. *Assessors of Boston*, 335 Mass. 53, 58, 64 (1956); *Lowell* v. *Boston*, 322 Mass. 709, 737 (1948); *Commonwealth* v. *Newhall*, 205 Mass. 344, 347-348 (1910); *South Terminal Corp* v. *EPA*, 504 F. 2d 646, 671-673 (1st Cir. 1974); *Friends of the Earth* v. *EPA*, 499 F. 2d 1118, 1125 (2d Cir. 1974). See also Verbit, The Urban Transportion Problem, 124 U. Pa. L. Rev. 368, 390397 (1975); Note, A Cure for the Highway Epidemic: A Balanced Subsidy, 5 Suffolk U.L. Rev. 902, 912-914 (1971).

The private motor vehicle, especially one occupied by only one person, often contributes unreasonably to congestion on the highways, to pollution of the environment, and to the uneconomic expenditure of natural resources. The East Cambridge restricted parking area is within reasonable walking distance of the various court and other public facilities in East Cambridge. It is also within reasonable walking distance of the Lechmere Square

subway station and of various bus stops of the Massachusetts Bay Transportation Authority. We take judicial notice that the court and other public facilities are accessible by public transportation and that the general vicinity in East Cambridge is developed substantially and intensely with commercial and industrial uses as well as with residential uses.

We think that a regulation which discourages persons from driving their automobiles to the congested neighborhood in the vicinity of the court house and other public facilities in East Cambridge deals rationally with the public interest in reducing highway congestion, in reducing air pollution, and in encouraging the use of public transportation in place of private transportation.

We turn then to the question whether the Cambridge parking regulation's distinction between Cambridge residents who have obtained parking permits and all others rationally furthers one or more of these legitimate State interests. The defendant relies on three opinions from other jurisdictions holding that parking restrictions which discriminated in particular ways between residents of an area and others were unconstitutional. *State* v. *Whisman*, 24 Ohio Misc. 59, 64-65 (C.P. Scioto County, 1970). *Cincinnati* v. *Cook*, 107 Ohio St. 223, 226-227 (1923). *Kaufman* v. *West*, 133 Wash. 192, 193 (1925). The *Whisman* case involved an ordinance whose purpose was limited to assuring parking rights to authorized residents of an area before others could park on public ways in that area. The court did not consider the broader purposes of the type which lie behind the Cambridge regulation. The *Cook* case was decided on the ground that there was an unconstitutional delegation to property owners of the right to determine who could park in front of their premises. The *Kaufman* case was decided on State constitutional grounds



only, and concerned an ordinance which discriminated against apartment house dwellers. The expressed purpose of the ordinance was a limited one. None of these opinions describes the character of the area where the parking restriction applied. These cases are inapplicable to the case before us, which involves a congested urban area which has substantial traffic and parking problems for years.

The Supreme Court of Virginia recently struck down on equal protection grounds a local zoning ordinance which authorized residents of a defined zone, their guests, and invitees to park their motor vehicles in that zone but barred all others from parking there. *County Bd. of Arlington County* v. *Richards*, Va. (1977).[c] The ordinances' declared purposes were to protect the zone and its residents. Those purposes were not founded, if they could have been under State law, on the impact of non-resident parking on regional considerations, such as traffic congestion, air pollution, and the encouragement of the use of public transportation. The opinion accordingly gives no consideration to the possibility that a parking regulation, seemingly favoring residents of an area, might be justified on broader considerations than those expressed by the local board.

We conclude that the placing of motor vehicles of residents of Cambridge in a category apart from all other motor vehicles is not irrational. See *Opinion of the Justices*, 341 Mass. 760, 781 (1960). Those Cambridge residents most interested in parking in the restricted area are those who live in it. If they leave their cars parked near their homes, they contribute nothing to air pollution or to the congestion of moving traffic on the highways. In general, those Cambridge residents who do not live in the restricted area but are

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[c] 231 S. E. 2d 231, 235 (Va. 1977).

permitted to park in it have a shorter distance to travel and will contribute less to traffic congestion and pollution than will persons driving to the restricted area from other municipalities. Legislative classifications need not be perfect in order to survive a challenge on equal protection grounds. *Keough* v. *Director of the Div. of Employment Security*, Mass. (1976).[d] *Opinion of the Justices*, Mass., (1975).[e] *Milton* v. *Civil Serv. Comm'n*, 365 Mass. 368, 377 (1974). *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). The defendant has failed to meet his heavy burden of proving that the classification made by the Cambridge traffic director is invidiously discriminatory.[7]

The discrimination made by the Cambridge regulation is based rationally on the use or nonuse of a motor vehicle. A resident who parks near his home is not using his automobile, whereas a person who parks in an area away from his home has used his vehicle and thus has contributed to the problems which the Cambridge regulation seeks to address. The rational distinction made by the Cambridge regulation is founded on vehicle use. Place of residence is merely a reasonable means of measuring that use.

We answer question d, concerning the constitutionality of the regulation, in the affirmative, passing only on the constitutional issue argued by the defendant. Questions a, b,

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[d]Mass. Adv. Sh. (1976) 810, 816.

[e]Mass. Adv. Sh. (1975) 2521, 2542-2543.

[7]We add that, if the regulation were constitutionally invalid for favoring residents of Cambridge who do not live in the East Cambridge restricted parking area in preference to non-residents, the appropriate judicial remedy might be to deny parking rights to such residents of Cambridge as well as to the defendant. Such a solution would achieve the purpose of the regulation better than granting parking rights to everyone by striking down the regulation in its entirety.



and c, all of which deal with the constitutionality of St. 1961, c. 455, as amended through St. 1972, c. 340, need not be answered because the defendant has not challenged the legislation as such. Question e asks what course the judge should follow. That question does not present a question of law, and we do not answer it. The report is dismissed as to the defendants Mr. Porter and Mr. Fishman. In the discretion of the judge, their motions to dismiss are to be treated as waived.

*So ordered.*